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 CELL SIGNALING TECHNOLOGY, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

EPITOMICS, INC.,

Plaintiff,

v.

CELL SIGNALING TECHNOLOGY, INC.,

Defendant.

Case No. C 07-5275 MMC

STIPULATED PROTECTIVE ORDER

1 Whereas pretrial discovery in the above-entitled action (the “Case”) may involve the
2 disclosure of confidential, trade secret, proprietary, technical, business and financial information
3 of a party or a third party entitled to protections from disclosure; and

4 Whereas the parties have in good faith conferred and have agreed upon the terms of a
5 Stipulated Protective Order (“Order”) and for good cause shown;

6 Plaintiff Epitomics, Inc. (“Epitomics”) and Defendant Cell Signaling Technology, Inc.
7 (“CST”) hereby stipulate, pursuant to Federal Rules of Civil Procedure 26(c), subject to the
8 approval of the Court, to the following Order:

9 1. Designated Material. Any information or material disclosed, formally or informally,
10 in this Case and any material submitted to the Court may be designated under this Order by any
11 party, or by the person or entity, including nonparties to this Case, disclosing or lodging it
12 (“Designating Person”). All such information and material and all information or material
13 derived from it constitutes “Material” or “Designated Material” under this Order. The
14 designation may be made for the purposes of avoiding invasion of individual privacy and of
15 protecting proprietary information, confidential business information and/or trade secrets. The
16 designation shall be “CONFIDENTIAL-OUTSIDE ATTORNEYS’ EYES ONLY” or
17 “CONFIDENTIAL” as described below.

18 2. Criteria for Designation.

19 (a) CONFIDENTIAL-OUTSIDE ATTORNEYS’ EYES ONLY. A Designating Person
20 may designate Material as “CONFIDENTIAL-OUTSIDE ATTORNEYS’ EYES ONLY” if the
21 Designating Person in good faith believes it constitutes extremely sensitive non-public
22 information whose disclosure would create a substantial risk of serious injury that could not be
23 avoided by less restrictive means.

24 (b) Confidential Information. A Designating Person may designate Material as
25 “CONFIDENTIAL” if the Designating Person reasonably believes that the Material embodies
26 non-public sensitive information.

1 3. Access to Designated Material. Except as otherwise required by law, Designated
2 Material shall not be used or disclosed for any purposes other than this Case and may only be
3 disclosed pursuant to the following provisions.

4 (a) CONFIDENTIAL-OUTSIDE ATTORNEYS' EYES ONLY Material. Material
5 designated under this Order as CONFIDENTIAL-OUTSIDE ATTORNEYS' EYES ONLY may
6 be disclosed only to qualified persons as follows:

7 (i) Counsel. Material designated "CONFIDENTIAL-OUTSIDE
8 ATTORNEYS' EYES ONLY" may be disclosed to outside counsel of record for
9 Epitomics and for CST in this case, their legal partners, of counsel, associates, contract
10 attorneys, legal assistants, case clerks, office staff and support services, such as copy
11 centers or court reporter or videographer services, and the like whose duties and
12 responsibilities require access to CONFIDENTIAL-OUTSIDE ATTORNEYS' EYES
13 ONLY Material.

14 (ii) Outside consultants/experts. Material designated "CONFIDENTIAL-
15 OUTSIDE ATTORNEYS' EYES ONLY" may be disclosed to independent
16 consultants/experts who are not present employees or counsel of either party, or of any
17 parent, subsidiary, affiliated or related company of either party and are retained solely for
18 the purpose of this Case, and the secretarial and clerical staffs of such consultants/experts,
19 so long as the consultants/experts and their staff have signed the undertaking attached
20 hereto as Exhibit A; and further provided that the parties mutually agree in advance to the
21 disclosure to such consultants/experts as follows:

22 The parties agree that, prior to transmitting Material designated "CONFIDENTIAL-
23 OUTSIDE ATTORNEYS' EYES ONLY" to an expert (testifying or consulting), each will give
24 the other ten (10) business days advance written notice. The written notice shall contain, at a
25 minimum, the expert's name, address, corporate affiliations (including consultations) and a
26 *curriculum vitae*. An objection to the expert shall be made, if at all, within ten (10) days of the
27 notification. The party seeking to make the disclosure of the Material to said expert shall have
28 the burden of (i) notifying opposing counsel in writing within ten (10) days of receipt of the

1 written notice; and (ii) making an appropriate motion to the Court within twenty (20) business
2 days of receipt of the written notice. If objection is made, no Material designated
3 “CONFIDENTIAL-OUTSIDE ATTORNEYS’ EYES ONLY” shall be transmitted to the experts
4 (testifying or consulting) in question until the Court issues an Order permitting disclosure or the
5 parties otherwise agree to the disclosure. If there are no objections within the ten (10) day period,
6 Material designated “CONFIDENTIAL-OUTSIDE ATTORNEYS’ EYES ONLY” may be
7 disclosed to testifying experts and nontestifying experts (consultants) and their office staff who
8 have been retained by counsel for any party and who have agreed in writing to be bound by this
9 Order.

10 (iii) Authors and Addressees. Material designated “CONFIDENTIAL-
11 OUTSIDE ATTORNEYS’ EYES ONLY” may be disclosed to any person who appears as
12 an author or addressee on the face of the document or who previously received a copy of
13 the document in the regular course of business.

14 (b) CONFIDENTIAL Material. Material designated under this Order as
15 CONFIDENTIAL may be disclosed only as follows:

16 (i) Counsel: Outside counsel of record for Epitomics and for CST in this case,
17 their legal partners, of counsel, associates, contract attorneys, legal assistants, case clerks,
18 office staff and support services, such as copy centers or court reporter or videographer
19 services, and the like whose duties and responsibilities require access to
20 CONFIDENTIAL Material;

21 (ii) Client personnel: Persons employed by a party to this lawsuit who have
22 signed the undertaking attached hereto as Exhibit A;

23 (iii) Outside consultants/experts: Persons who are not employed by the
24 receiving party but are retained by the receiving party or its attorneys of record in this
25 Case, for the purposes of assisting in preparation of this Case, who have signed the
26 undertaking attached hereto as Exhibit A;

27 (iv) Authors and Addressees. Material designated “CONFIDENTIAL” may be
28 disclosed to any person who appears as an author or addressee on the face of the

1 document or who previously received a copy of the document in the regular course of
2 business.

3 (c) Others by agreement or order. All Designated Material or a class of Designated
4 Material may be disclosed to other persons who are subsequently designated by agreement of the
5 parties or by order of the Court upon motion by a party.

6 4. Disclosure of Designated Materials. If at any time a party is required to disclose
7 Material designated as CONFIDENTIAL or CONFIDENTIAL-OUTSIDE ATTORNEYS' EYES
8 ONLY by any Court, administrative or legislative body, law, or regulation, or is requested by any
9 other Person or entity having authority to require the disclosure of such Material, the Party shall
10 immediately give written notice thereof to the Designating Party with respect to the Material to be
11 disclosed and shall afford the Designating Party reasonable opportunity to pursue formal
12 objections to such disclosure.

13 5. Custody of Designated Materials. A person having custody of any Designated
14 Material shall maintain it in a manner that limits access to qualified persons.

15 6. Designating Documents. Documents shall be designated "CONFIDENTIAL-
16 OUTSIDE ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" and shall have each page of all
17 such documents and exhibits marked as such. The documents shall be marked prior to
18 production. With respect to documents already produced or exchanged by the parties and
19 previously marked confidential or otherwise subject to confidentiality provisions pursuant to
20 agreement of the parties prior to entry of this Order, such documents are to be treated as
21 CONFIDENTIAL under the terms of this Order and marked as such when produced or otherwise
22 used in this action. Designated Material not reduced to documentary, tangible or physical form or
23 which cannot be conveniently designated in the manners set forth or described herein shall be
24 designated by the Designating Person by informing the receiving party in writing.

25 7. Designating Depositions.

26 (a) Deposition transcripts or portions thereof may be designated either
27 "CONFIDENTIAL" or "CONFIDENTIAL-OUTSIDE ATTORNEYS' EYES ONLY."
28

1 (b) Where testimony is designated at a deposition, the Designating Person may exclude
2 from the deposition all persons other than those to whom the Designated Material may be
3 disclosed under paragraph 3 of this Order.

4 (c) A Designating Person may mark Designated Material as a deposition exhibit and
5 examine any witness thereon, or examine any witness about Designated Material, provided that
6 the deposition witness is one to whom the Designated Material may be disclosed under paragraph
7 3 of this Order and the exhibit, if any, and related transcript pages receive the same
8 confidentiality designation as the original Designated Material.

9 8. Use of Confidential Materials During Court Proceedings.

10 In the event that any Designated Material is used in any Court pre-trial proceeding in this
11 litigation (including but not limited to conferences, oral arguments, or hearings), the Designated
12 Material shall not lose its status as Designated Material through such use. No less than three (3)
13 days prior to such pre-trial proceeding, the party intending to use such Designated Material shall
14 notify the Designating Party of its intention. For the purposes of hearings on motions,
15 designation or citation of the briefs of Designated Material shall be sufficient notice to a party
16 with respect to information referenced therein. In the event that the 3-day notice provided for
17 herein is not practical, this provision shall not be used to strike confidential materials from being
18 used at the proceeding, except for good cause shown, and the party seeking to use the Designated
19 Material on less than 3 days' notice shall notify the Court and the Designating Party of its intent
20 to use the Designated Material prior to the use of any such Designated Material. Upon such
21 notification, the parties shall meet and confer and the party seeking to use the Designated
22 Material shall take all steps reasonable required to protect the confidentiality of the Designated
23 Material during such use, including, but not limited to, requesting in camera proceedings. The
24 terms of this Order do not preclude, limit, restrict, or otherwise apply to the use of Designated
25 Material at trial. The parties agree to meet and confer in good faith prior to the trial to establish
26 procedures for the use of Designated Material at trial.

1 9. Procedure for Submitting Confidential Information to the Court.

2 All submissions to the Court of “CONFIDENTIAL-OUTSIDE ATTORNEYS’ EYES
3 ONLY” or “CONFIDENTIAL” Material shall be made in accordance with Northern District of
4 California Civil Local Rule 79-5, “Filing Documents Under Seal.”

5 10. Designations to be Reasonable.

6 Designating Persons will use reasonable care to avoid designating any documents or
7 information as “CONFIDENTIAL-OUTSIDE ATTORNEYS’ EYES ONLY” or
8 “CONFIDENTIAL” that are generally available to the public or for which the Designating Person
9 does not have a good faith belief that the document or information satisfies the criteria set forth in
10 paragraph 2.

11 11. Objections. A party may challenge the propriety of any designation under this
12 Order. The Designating Person and the party objecting to the designation shall then meet and
13 confer regarding the challenged designation. If they are unable to resolve the disagreement, the
14 objecting party shall make an appropriate motion to the court. Absent order of the Court to the
15 contrary, the Material shall maintain the original designation.

16 12. No Prejudice.

17 (a) Nothing in this Order shall preclude any party from seeking and obtaining additional
18 or different protection with respect to the confidentiality of discovery.

19 (b) This Order shall not diminish any existing obligation or right with respect to
20 Designated Material, nor shall it prevent a disclosure to which the Designating Person consents in
21 writing before the disclosure takes place.

22 (c) The designation of information as “CONFIDENTIAL-OUTSIDE ATTORNEYS’
23 EYES ONLY” or “CONFIDENTIAL,” pursuant to this Order, shall not be construed as a
24 concession by a producing party that such information is relevant or material to any issue or is
25 otherwise discoverable, or by a receiving party that such information is, in fact, a trade secret or
26 confidential research, development, or commercial information.

27 13. Inadvertent Production of Privileged Materials. The inadvertent production of any
28 document or thing shall be without prejudice to a claim that such material is protected by the

1 attorney-client privilege or protected from discovery as work product. If within a reasonable time
2 after materials are disclosed, a Designating Person asserts that such materials are protected by the
3 attorney-client privilege or work product doctrine and were inadvertently produced, the receiving
4 party shall take prompt steps to ensure that all known copies of such material are returned to the
5 Designating Person and the receiving party shall not use any of the information contained in the
6 inadvertently produced materials in any manner. Any inadvertent disclosure of material protected
7 by the attorney-client privilege, attorney work product doctrine, or any other applicable privilege
8 shall not be deemed a waiver of privilege.

9 14. Error in Designation. The inadvertent or unintentional production of documents
10 containing, or otherwise disclosing, private, proprietary or secret information without being
11 designated "CONFIDENTIAL-OUTSIDE ATTORNEYS' EYES ONLY" or
12 "CONFIDENTIAL", as appropriate, at the time of production or disclosure shall not be deemed a
13 waiver in whole or in part of a Designating Person's claim of confidentiality or secrecy, either as
14 to the specific information disclosed or as to any other information relating thereto or on the same
15 or related subject matter. Any error in designation shall be corrected within a reasonable time
16 after the Designating Person becomes aware of the error.

17 15. Final Disposition. Upon final termination of this case including the running of any
18 time to appeal, seek review, or move for relief under Fed. R. Civ. P. 60, and at the written request
19 of the Designating Person, all Designated Material and all copies, extracts and summaries thereof
20 shall be returned to the person who produced the Material, or destroyed with written certification
21 of such destruction. However, counsel of record may retain copies of pleadings, attorney and
22 consultant work product, and deposition transcripts for archival purposes.

23 16. Modification and Survival. The restrictions imposed by this Order may only be
24 modified or terminated by written stipulation of all parties, by stipulation read into the Court
25 record or deposition record, or by order of the Court. Any party may seek modification of this
26 Order by the Court, upon showing of good cause therefor. This Order shall survive termination
27 of this case.
28

17. Restrictions. Nothing in this Order shall impose any restriction on the use or disclosure by a party of: (a) its own documents and information or (b) documents and information obtained independently from other sources without violation of confidentiality obligations owed to any party in this case.

18. Remedies for Violation. Any violation of the terms of this Protective Order may result in the imposition of such relief as deemed appropriate by a court of competent jurisdiction, including specific performance and injunctive relief. It shall not be a defense to a request for injunctive relief that the aggrieved party possesses an adequate remedy at law.

19. Notices may be given under this Order by facsimile or e-mail.

Dated: January 22, 2008

MATTHEW I. KREEGER
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By: /s/ Jana G. Gold

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Attorneys for Plaintiff
EPITOMICS, INC.

Dated: January __, 2008

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Attorneys for Defendant
CELL SIGNALING TECHNOLOGY, INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated:

Honorable Maxine M. Chesney
U.S. District Court Judge

EXHIBIT "A"

UNDERTAKING RE: INFORMATION COVERED BY PROTECTIVE ORDER
Epitomics, Inc., v. Cell Signaling Technology, Inc., Case No. C 07-5275 MMC (N.D. Cal.)

The undersigned hereby acknowledges that he/she has read the Stipulated Protective Order entered in *Epitomics, Inc., v. Cell Signaling Technology, Inc.*, Case No. C 07-5275 MMC (N.D. Cal.), and understands its terms and agrees to be bound by each of those terms. Specifically, and without limitation upon such terms, the undersigned agrees not to use or disclose any "CONFIDENTIAL-OUTSIDE ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" Material made available to him/her other than in accordance with said Stipulated Protective Order. The undersigned further agrees and understands that this agreement may be enforced in a court of law, and additionally agrees to submit to the jurisdiction of the state and federal courts in the State of California for the purpose of enforcing this agreement.

Dated: _____

 (signature)

 (type or print name of individual)

Of: _____
 (name of employer)